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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Telecommunications Services	)	**CS Docket No. 95-184**
Inside Wiring	)	
	)	
Customer Premises Equipment	)	
	)	
In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	**MM Docket No. 92-260**
And Competition Act of 1992	)	

REPLY COMMENTS OF
UTC, THE TELECOMMUNICATIONS ASSOCIATION

Pursuant to Section 1.415 of the Commission's Rules, UTC, The Telecommunications Association,[1] hereby respectfully submits the following reply comments on the FCC's *Second Further Notice of Proposed Rulemaking,* (*Second FNPRM*), FCC 97-184, released January 16, 1998, in the above-captioned matter regarding exclusive video service contracts in the multi-dwelling unit (MDU) marketplace.

I. Introduction

UTC is the national representative on telecommunications matters for the nation's electric, gas and water utilities, and natural gas pipelines. As UTC's members move into a competitive environment many of them are actively exploring entrance into a wide variety of telecommunications and video markets, including the provision of multichannel video programming to MDUs. Accordingly, UTC has an interest in this proceeding and welcomes the opportunity to provide the following comments.

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[1] UTC was formerly known as the Utilities Telecommunications Council.

The current proceeding has been undertaken to further promote competition in the provision of video services in the MDU marketplace. Specifically, the FCC seeks comment on what conditions if any it should place on the ability of multi-channel video program distributors (MVPDs) to enter into exclusive service contracts with MDUs, and whether it should limit the ability of incumbent cable operators to enter into exclusive contracts with MDU owners.

As a general matter, UTC does not believe that exclusive service contracts between MVPDs and MDUs are inherently anti-competitive. Indeed, in order to initiate service in an MDU many new MVPDs require exclusive contracts to ensure their ability to recover investment costs. However, UTC does recognize that incumbent cable operators may have an unfair competitive advantage that could preclude competition in the video marketplace which may warrant the imposition of certain constraints on their ability to enter into unlimited exclusive service contracts. At a minimum, UTC recommends that all exclusive contracts with MDUs contain a full disclosure of the rights and options of MDUs with regard to video services and inside wiring under state and Federal law, as well as an option for the MDU to buy-out the existing contract.

Because the primary benefit of an exclusive contract is that it allows new MVPDs to recover their investment, UTC supports the FCC's proposal to adopt a "cap" on the length of exclusive contracts for all MVPDs that would limit the enforceability of exclusive contracts to the amount of time reasonably necessary for an MVPD to recover its specific capital costs of providing service to that MDU, including, but not limited to, the installation of inside wiring, headend equipment and other start-up costs. Specifically, UTC supports an approach under which the FCC would adopt a presumption that all existing and future exclusivity provisions would be enforceable for a maximum term of five years, except for exceptional cases in which the MVPD could demonstrate that it has not had a reasonable opportunity to recover its specific investment costs.

UTC supports allowing service providers to structure their business arrangements so as to recover their capital costs within the five-year timeframe. After a video service provider has had an opportunity to recover its costs under an exclusive contract on a particular property, the FCC should prohibit future exclusive contracts between the video service provider and the property owner, unless the service provider can demonstrate that the exclusive contract is necessary to recoup a substantial new investment in the property. In such case, the MVPD should be required to provide a break out or separate accounting of these extraordinary costs. These unrecovered investment costs should be limited to the basic transport network and should not include proprietary components or elements that are unique to the video service provider.

UTC supports an option under which MDU owners are afforded an opportunity to terminate the exclusive contract and retain the inside wiring, in exchange for a payment to the provider compensating it for unrecovered investment costs. Again, the MVPD should be required to provide a break out or separate accounting of its amortized costs. Also, unrecovered investment costs under the buy-out provision should only cover the cost of the basic delivery medium and not include components designed exclusively for the use of the incumbent video service provider that is being displaced. Otherwise, a MVPD would have the ability to lengthen its exclusivity simply by incorporating unique design components or require the MDU to purchase components that are of no practical value to it.

UTC does not support a proposal to limit exclusive contracts where the MVPD possesses market power, because of the practical difficulty in defining "market power" for these purposes, as well as questions as to how to properly define the relevant geographic market.

UTC supports FCC limitations on the ability of MVPDs to enter into "perpetual" exclusive contracts (i.e., those running for the term of a cable franchise and any extensions thereof), because in most instances they were obtained through the exercise of near monopoly power by the incumbent video service provider. “Perpetual” exclusive contracts impede competition and should be eliminated. UTC suggests that "perpetual" exclusive contracts be addressed under the general rule, discussed above, that limits the enforceability of exclusive contracts to five years from execution unless the MVPD can demonstrate that it has not had a reasonable opportunity to recover its specific capital costs.

WHEREFORE, THE PREMISES CONSIDERED, UTC respectfully urges the Commission to take action on this *Second Further Notice of Proposed Rulemaking* in accordance with the views expressed in these reply comments.

Respectfully submitted,

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